

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

ANTHONY TICHENOR,	)	
	)	
Plaintiff,	)	
	)	No. 1:10-cv-2424
vs.	)	
	)	
INDEPENDENT PORTFOLIO	)	
MANAGEMENT, INC.,	)	<b>JURY DEMAND ENDORSED HEREON</b>
	)	
Defendant.	)	

**COMPLAINT**

NOW COMES the Plaintiff, ANTHONY TICHENOR, by and through his attorneys, LUXENBURG & LEVIN, LLC, and for his Complaint against the Defendant, INDEPENDENT PORTFOLIO MANAGEMENT, INC., Plaintiff alleges and states as follows:

**PRELIMINARY STATEMENT**

1. This is an action for actual and statutory damages for violations of the Fair Debt Collection Practices Act (hereinafter the “FDCPA”), 15 U.S.C. § 1692, *et seq.*, and the Ohio Consumer Sales Practices Act (hereinafter the “OCSPA”), Ohio Rev. Code § 1345.01, *et seq.*

**JURISDICTION AND VENUE**

2. Jurisdiction arises under the FDCPA, 15 U.S.C. § 1692, *et seq.* Venue lies properly in this district pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events and omissions giving rise to the claim occurred within this District.

**PARTIES**

3. Plaintiff is an individual who was at all relevant times residing in Bay Village, Ohio.

4. Plaintiff is a “consumer” as defined in 15 U.S.C. § 1692a(3), as he is a natural person allegedly obligated to pay a debt.

5. At all relevant times, Defendant acted as a “debt collector” within the meaning of 15 U.S.C. § 1692a(6), in that it held itself out to be a company collecting a consumer debt allegedly owed by Plaintiff.

6. On information and belief, Defendant is a corporation of the State of New York, which is not licensed to do business in Ohio and which has its principal place of business in Cheektowga, New York.

### **COUNT I**

(Violation of the Fair Debt Collection Practices Act)

7. On or about March 24, 2010, a representative and/or employee of Defendant contacted Plaintiff by telephone in an attempt to collect the aforementioned alleged debt. The caller left a message on Plaintiff’s answering machine, but failed to disclose that the call was from a debt collector.

8. Further, Defendant’s representative and/or employee stated in the aforementioned message that the call was regarding “pending litigation due for processing in your respective county,” thus implying that the call was from an attorney or on behalf of an attorney, and that a lawsuit had already been and/or would be filed against Plaintiff.

9. In a subsequent telephone call to Plaintiff, Defendant’s representative and/or employee stated to Plaintiff that he would be sued if he did not pay Defendant and also that Defendant was going to go before a judge and Plaintiff’s wages would be garnished. However, no lawsuit has been filed against Plaintiff related to the alleged debt, nor has a judgment been entered against him.

10. In its attempts to collect the aforementioned alleged debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Falsely representing or implying that Defendant's employee was an attorney or was communicating on behalf of an attorney, in violation of 15 U.S.C. § 1692e(3);
- b. Representing or implying that nonpayment of the alleged debt would result in the garnishment of Plaintiff's wages where such action was unlawful and/or Defendant did not intend to take such action, in violation of 15 U.S.C. § 1692e(4);
- c. Threatening to take action that could not legally be taken and/or that was not intended to be taken, in violation of 15 U.S.C. § 1692e(5);
- d. Using a false, deceptive or misleading representation or means in connection with the collection of the alleged debt or to obtain information about Plaintiff, in violation of 15 U.S.C. § 1692e(10);
- e. Failing to disclose in every communication with Plaintiff that the communication was from a debt collector, in violation of 15 U.S.C. § 1692e(11); and
- f. By acting in an otherwise deceptive, unfair and unconscionable manner and failing to comply with the FDCPA.

11. As a result of Defendant's violations as aforesaid, Plaintiff has suffered and continues to suffer personal humiliation, embarrassment, mental anguish and emotional distress.

WHEREFORE, Plaintiff, ANTHONY TICHENOR, respectfully prays for a judgment against Defendant as follows:

- a. Statutory damages of \$1,000.00 for each violation of the FDCPA;
- b. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff; and
- c. Any other relief deemed appropriate by this Honorable Court.

## **COUNT II**

(Violation of the Ohio Consumer Sales Practices Act)

12. Plaintiff hereby adopts, re-alleges and incorporates by reference all allegations set forth above as though fully rewritten here.

13. Defendant's actions in attempting to collect the alleged debt from Plaintiff as described above constitute a "consumer transaction" as defined in Ohio Rev. Code § 1345.01(A).

14. Defendant is a "supplier" as defined in Ohio Rev. Code § 1345.01(C), as Defendant is in the business of effecting or soliciting consumer transactions.

15. Plaintiff is a "consumer" as defined in Ohio Rev. Code § 1345.01(C), as he is a person who engaged in a consumer transaction with a supplier, the Defendant herein.

16. Defendant's actions and omissions described above constitute unfair, deceptive and unconscionable acts and practices, in violation of Ohio Rev. Code §§ 1345.02 and 1345.03, and the substantive rules promulgated under the OCSPA.

17. Defendant, through its agents and employees, knowingly committed the unfair, deceptive and unconscionable acts and practices described above.

18. As a result of Defendant's unfair, deceptive and unconscionable acts and practices, Plaintiff has suffered, and continues to suffer, various damages which include, but are not limited to the categories of damages described above.

WHEREFORE, Plaintiff, ANTHONY TICHENOR, respectfully prays for a judgment against Defendant as follows:

- a. Statutory damages of \$200.00 for each violation of the OCSPA;
- b. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff; and
- c. Any other relief deemed appropriate by this Honorable Court.

**JURY DEMAND**

Pursuant to Civil Rule 38, Plaintiff hereby demands a trial by jury on all issues in this action, except for any issues relating to the amount of attorneys' fees and litigation costs to be awarded should Plaintiff prevail on any of his claims in this action.

Respectfully Submitted,

/s/ David B. Levin  
David B. Levin (0059340)  
Mitchel E. Luxenburg (0071239)  
Attorneys for Plaintiff  
Luxenburg & Levin, LLC  
23875 Commerce Park  
Suite 601  
Beachwood, OH 44122  
(888) 493-0770, ext. 302 (phone)  
(866) 551-7791 (facsimile)  
David@LuxenburgLevin.com